FILED

AUG 12 1972

MICHAEL BOOAK, JR.,C

IN THE SUPREME COURT

OP THE

UNITED STATES

October Term, 1972

No. 71-6278

CONDRADO ALMEIDA-SANCHEZ,

Petitioner,

VS.

UNITED STATES OF AMERICA

Respondent.

MOTION FOR LEAVE TO FILE

BRIEF AMICUS CURIAE and BRIEF AMICUS CURIAE

> LUKE MCKISSACK Attorney at Law Suite 521 6430 Sunset Boulevard Hollywood, California 90028 [213] 466 7331

# IN THE SUPREME COURT

OF THE

UNITED STATES

October Term, 1972

No. 71-6278

CONDRADO ALMEIDA-SANCHEZ,

Petitioner,

A. MO APPARENT REASON EXTERS WHY

SERVE AS

UNITED STATES OF AMERICA

Respondent.

MOTION FOR LEAVE TO FILE

BRIEF AMICUS CURIAE

BRIEF AMICUS CURIAE

LUKE McKISSACK
Attorney at Law
Suite 521
6430 Sunset Boulevard
Hollywood, California
90028
[213] 466 7331

#### IN THE SUPPEME COURT

BHT TO

UNITED STATES

October Term, 1972

No. 71-6278

CONDRAIN ALMEIDA-SANCERE,

Petitioner,

. av

UNITED STATES OF AMERICA

Respondent.

MOTION FOR LEAVE TO FILE

BRIEF AMICUS CURIAE and CURIAE AMICUS CURIAE

LUKE McKISSACK
Attorney at Law
Suite 521
6430 Sunset Boulevard
Hollywood, California
90028
[213] 466 7331

## TABLE OF CONTENTS

Table of Authorities.

D	z	7	9	×
4	C	33	н	G
Sec.	i e	100	×	н

EAST DICHIR OF

Motion	for Leave to File Brief
Brief	Amicus Curiae: TERRING LAW ADIDERS
I.	THE EXCEPTION ALLOWING WARRANTLESS SEARCHES WITHOUT PROBABLE CAUSE UNDER 8 UNITED STATES CODE \$ 1357(a) AND DEFINED BY REGULATION 8 C.F.R. \$287.1(a)(2) CONTRAVENES PROTECTIONS AFFORDED BY THE FOURTH AMENDMENT  A. NO APPARENT REASON EXISTS WHY POUNTH AMENDMENT PRINCIPLES DO

- II. THERE IS NO RATIONAL JUSTIFICATION FOR ALLOWING 8 U.S.C. § 1357 (a) TO SERVE AS A BLANKET EXCEPTION TO THE FOURTH AMENDMENT REQUIREMENT OF PROBABLE CAUSE.

### TABLE OF CONTENTS

Page

Tole of Authorities. . . . . . . . . . .

Motion for Leave to File Brief

Brist Amicus Curiss: C

THE EXCEPTION ALLOWING WARRANTINES SEARCHIE WITHOUT PROBABLE CAUSE UNITED STATES CODE & 13176 AND DEFINED BY RECURATION 8 C.F.R. 1257.1(a) (2) CONTRAVENES PROTECTION AFFORDED BY THE FOURTH AMEXIMMENT.

NO APPARENT MEASON EXISTS WHY POURTE AMEDINARY PRINCIPLES DO NOT APPLY WITH THE SAME FORCES TO SHADOULES FOR AUTOMOBILES FOR SMUCGLED ALIENS AS THEY DO TO SIMILAR SEARCHES FOR SMUCGLED MEET HANDISE. THE LOWER COURT ERRED IN BASING ITS STRING UPON THIS DISTINCTION.

THERE IS NO RATIONAL JUSTIFICATION FOR ALLOWING B 1.5.C. 5 1357 (a) TO SERVE AS A BLANKET PROEPTION TO THE FOURTH ANTHOROUGH REQUIREMENT OF PROBABLE CAUSE.

III.	THIS COURT MUST IN ACCORD WITH ITS CONSTITUTIONAL DUTY TO ANNUL
	STATUTES AND REGULATIONS VIOLATIVE
	OF THE CONSTITUTION, STRIKE DOWN
	THIS UNWARRANTED GOVERNMENTAL BID
	FOR LEBENSRAUM AS IMPLEMENTED BY
	GOVERNMENTAL REGULATIONS RESCINDING
	THE SEARCH AND SEIZURE RIGHTS OF
	OUR CITIZENS, DENYING THEM EQUAL
	PROTECTION OF THE LAWS, ABRIDGING
	THEIR RIGHT TO TRAVEL, COMPRESSING
	THEM INTO THE REFUGE OF MIDDLE
STATE OF THE PARTY OF	AMERICA, DETERRING LAW ABIDING
	MIDDLE AMERICANS FROM SEEKING
	EMPLOYMENT OR ENJOYING VACATIONS
	NEAR OUR NATION'S BOUNDARIES, AND
	OBSTRUCTING FREEDOM OF INTERSTATE
	COMMERCE16

29a

30

-22-

-25-

-12-

Conclusion. . . . . . .

100 110 111

(1403) W

Ass. V. New Hampshire

wa v. California 201, 83 5, 51

s v. California

8, 160, 62 8, 86, 164

y. Superior Court ta Clara County App. 3d 862, 97 Cal,

iii

LIII

THIS COURT MUST IN MICEND WITH INC CONSTITUTIONAL DOTY TO ANNOL STATUTES AND REGULATIONS VIOLATIVE OF THE CONSTITUTION, STRIKE DORM THIS LINEARRANTED GOVERNMENTAL BID FOR LEGISSRAUM AS IMPLEMENTED BY COVERVISORAL REVENIATIONS RESCRINGING THE SEARCH AND SEASONS RICHTS OF QUE CITIARNS, DENVING THEM EQUAL PROTECTION OF THE LAWS, ARRIDGING THE RIGHT TO THAVEL, COMPRESSING THEN INTO THE REFUGE OF MICHAEL AMERICA, OFFERRING LAW AREDING MIDDLE AMERICANS FROM SERKING EMPLOYMENT OR ENJOYING PACETICUS MAN OUR WATTON'S SCHUDARIES, AND DESTRUCTION PREFERM OF INTERSTRUCK 

Conclusion.

## TABLE OF AUTHORITIES

	PAGE
Aptheker v. Secretary of State 378 U.S. 500, 84	~15-
8. Ct. 1659 (1964) talk tatas	-23,-25-
Boyd v. United States 6 S. Ct. 524 (1886)	-17-
Carroll v. United States 267 U.S. 132, 45 S. Ct. 280 (1925)	-5-,-20-
Cervantes v. United States 263 F.2d 800 (9th Cir. 1959)	-3-,-6-,-19-
Chimel v. California 395 U.S. 752, 89 S. Ct. 2034 (1969)	-11-,-12-
Coolidge v. New Hampshire 403 U.S. 443, 91 S. Ct. 2022 (1971)	-9-,-14-
Douglas v. California 372 U.S. 353, 83 S. Ct. 814 (1963)	-16- -22-
Edwards v. California 314 U.S. 160, 62 S. Ct. 164 (1941)	-22× -25-
Gallik v. Superior Court of Santa Clara County	-13-
5. Cal. App. 3d 862, 97 Cal. Rptr. 693	-12-
Av Ed. (702 (1049)	-24-

## TABLE OF AUTHORITIES

Artheker V. Secretary as 5 ot 1559 (1964) Contract

Soyd V. United States -17-

> Cerroll v. United Statos 050 (1925)

C : vantes v. United States

Chinal v. California 30 d.s. 752, 89 S. Ct. 2034 10361

> Coolidge v. New Hampshire 2022 (1971)

Douglas v. California (tagery are

(ILDOS)

Sallik v. Superior Court g: Santa Clara Count - Cel. App. 3d 862, 97 Cal.

EQ . 23,03

-25-113-

-0-1-0-

-11mg-11-

-11-,-0-

-22-

-25-

-12-

Heart of Atlanta Motel, Inc. v. United States 379 U.S. 241, 85 S. Ct. 348	
379 U.S. 241, 85 S. Ct. 348 (1964)	-284-,-13-
Henderson v. United States 390 F.2d 805 (9th Cir. 1967)	-15-
Hirabayashi v. United States 320 U.S. 81, 63 S. Ct. 1375	-13-
(1943) Koehn	-26-
Katz v. United States 389 U.S. 347, 88 S. Ct.	-12-,-14
507 (1967) Superior Court	-25-
Kent v. Dulles 357 U.S. 116, 78 S. Ct.	10-,-11
1113 (1958) Williams	-22-
Korematsu v. United States 323 U.S. 214, 65 S. Ct. 193	-13-
(1944)	-26-,-27-
Landau v. United States	-24-
82 F.2d 285 (2nd Cir.)	-5-
Marbury v. Madison 1 Cranch 137 (1904)	-16-2-
McLaughlin y. Florida	
379 U.S. 184, 85 S. Ct. 283 (1964)	-22-0
Mozzetti v. Superior Court 4 Cal. App. 3d 699, 94 Cal. Rptr. 412 (1971)	-13-23-
Passenger Cases 7 How. 283, 492, 12 L. Ed. 702 (1849)	7.67
4. 24. /02 (1849)	-24-

seart of Atlanta Motel, Inc. 310 U.S. 241, 85 S. Ct. 348 (1984) -85-Herderson v. United States 271-Brabayachi v. United States 240 MS. 81, 63 G. CE. 1375 12400 -25-Acta v. United States 57 (1967) Keng v. Dalles N. 0.8. 116, 78 S. Ct. THESELV ETIL -22-Morentsu v. United States 11 0.0. 214, 65 6, Ct. 193 (1344) -25-,-27la day y. United States (. 12 2 285 (2nd Clic) 100 C 800 mostbam v values -31-Floughlin v. Florida # U.S. 187, 85 S. Cb. (1361) if 200to retoi v. Superior Court Cal, App. 3d 699, 94 Cal. ((1971) 511 (1971) -E1+ searcher Cases 00. 283, 892, 12 (4, 702 (1849) -12-

People v. Cassel 23 Cal App. 3d 715, 100 Cal. Rptr. 520 (1972)	-12-,-13-
People v. Heredia 20 Cal. App. 3d 194, 97 Cal. Rptr. 488	-13-
People v. Koehn 102 Cal. Rptr. 102 (1972)	-12-,-14-
People v. Superior Court (Kiefer), 3 Cal. 3d 807, 91 Cal. Rptr 729 (1970)	-10-,-11-
People v. Williams 20 Cal. App. 3d 590, 97 Cal. Rptr. 815 (1971)	-13-
Shapiro v. Thompson 394 U.S. 618, 89 S. Ct. 1322 (1969)	<del>-</del> 24-
Skinner v. Oklahoma 316 U.S. 535, 62 S. Ct. 110 (1942)	-22-
United States v. Almeida-Sanchez 452 F. 2d 459 (1971)	-8-
United States v. Guest 383 U.S. 745, 86 S. Ct. 1175 (1966)	-23-
United States v. Hortze 179 F. Supp. 913 (1959)	-6-

Copie v. Cameni. 180 Cal. Roter 520 -12-,-13-155055 aibstell .v elgon 00 Cal. App. 3d 194, - 2 1 --11.0073 gaget v. v. elaces SOL THOR TIES SOL -12-,-St-10000 rople V. Superior Court (seter), ) Cal. 3d 807, -II-,-01-11 Cal. Rott 729 (1970) Page v. Williams 10 Cal. App. 3d 590, 97 4014 madicont .v origins .20 TE 08 7810 E.U SE. -15-1332 (2969) Kinner v. Oklahoma 116 0.8. 533, 62 S. Ct. -22tto (1942) . Wited States Vi. Logids-Sanchez m B m Maried States v. Guest 383 U.S. 745, 86 S. Ct. - EElifs (less) Onlied States v. Bortze

United States v. Lee Ngee How  Virgil v. Superior Co.	-5-
Virgil v. Superior Court 268 Cal. App. 2d 127, 73 Cal. Rptr 793 (1968)	-1-,-2-,-
Von Moltke v. Gillies 332, U.S. 78, 68 S. Ct. 316 (1948)	*15-,-21- -28-,-29-
Zemel v. Rusk 381 U.S. 1 85 S. Ct., 1271 (1965)	-17- -23-,-25-

Mailed States Constitution, Flath Associant ### States v. Ise Mose Now -51 12. Supp. 517
15. Supp. 517
15. Superior Court
15. Apr. 2d 127 71
15. Rptr 793 (1968) -13-

on Moltke v. Gillies 11, U.S. 78, 58 S. Ct. 316 1948)

271-

2 mai v. Rusk 231 U.S. 1 85 s. de. 1271 (1965)

-28-,-85-

# CONSTITUTION AND STATUTES

8 U.S.C. Sec. 1357(a)

-1-,-2-,-8-,
-9-,-10-,-12-,
-15-,-21-,-27-28-,-29-,-31
8 C.F.R. 287.1(a)(2)

-1-,-18-,-21-,
-28-,-29-,-31-

w. California death penalty case

183, 91 S. Ct. 1454 (1971), and

and head before this body in Gilbert V.

1981 Ct. 1981 Ct. 261; B7 3, Ct. 1981

aside and United States v. Freed &

19 U.S.C.A. Sec 482 The un-18-gred

United States Constitution, as court, who Fourth Amendment

United States Constitution, Fifth Amendment -21-

interest of the Asimus Curice in the case arises from the fact that that the fact that care of Appeals for the Winth in Which the same is repeately

## CONSTITUTION AND STATUTES

U.S.C. Sec. 1357(a)

-1-,-2-1-8 .-OI-,-E-

-15-,-21-, -28-,-29-C.F.R. 287.1(4)(2)

-,-8I-,-IM 1-28-4-85m 19 U.S.C.A. Sec 482

-81-

United States Constitution, Furth Amendment

United States Constitution, Fifth Amendment

-- 22 --

# MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF AND BRIEF AMICUS CURIAE

Attorney, Luke McKissack hereby respectfully moves for leave to file the attached brief Amicus Curiae in support of Petitioner in this case. The undersigned is a member of the bar of this court, who has previously appeared as Amicus Curiae on several occasions such as the recent McGautha v. California death penalty case (402 U.S. 183, 91 S. Ct. 1454 (1971), and has argued before this body in Gilbert v. California, (388 U.S. 263, 87 S. Ct. 1951 (1967)) and United States v. Freed & Sutherland (401 U.S. 601 91 S. Ct. 1112 (1971)) . ough the United States Border

The interest of the Amicus Curiae in the present case arises from the fact that I am a party to a case presently pending in the Court of Appeals for the Ninth Circuit, in which the same issue is squarely

MOTION FOR LEAVE TO FILE AMICUS CURIAR CURIAR AMICUS CURIAR

Attorney, Luke HoKissack hereby respectfully moves for leave to Kile the attached brief Amicus Curise in support of otitioner in this case, The undersigned is a member of the bar of this court, who is previously appeared as Amicus Curise of several occasions such as the recent several occasions such as the recent (102 p.S. 181, 91-8. Ct. 1454 (1971), and california, (382 u.S. 263, 87 S. Ct. 1951 (1957)) and United States y. Freed & (1967)) and United States y. Freed & (1967)) and United States y. Freed & (1967)) and United States y. Freed & (1967)).

The interest of the Amicus Curise in
the present case arises from the fact that
I am a party to a case presently pending
in the Court of Appeals for the Minth
Circuit, in which the same issue is square

Pablo Barron, No. 11904 Criminal). A

decision on that issue, the constitutional

validity of the border checkpoint search

under 8 U.S.C. 1357(a) and 8 C.F.R. \$287.1

(a) (2), will be clearly dispositive of my

case. The location of the checkpoint

search in Barron (at San Clemente on Highway

101 or Interstate 5) is far more frequently

encountered than the one in the Almeida
Sanchez case presently before the Court,

and hence, reveals a more pervasive

pattern of conduct.

The Oceanside division of the California Highway Patrol indicated that upwards of 25,000 automobiles per day travel northward through the United States Border

Patrol checkpoint in question in Barron.

Over one month's time, approximately

700,000 persons find themselves in the situation presented in Barron, i.e.,

subject to exploratory searches totally

presented United States v. Ricardo esto Barron, No. 11904 Original). A decision on that issue, the constitution validity of the botder checkpoint search oder 8 U.S.C. 1357(a) and 8 C.F.R. 5287. (a) (2), will be clearly dispositive of my case. The location of the checkpoint courch in Barron (at Ben Clemente on High iol or Interstate 5) is far more frequent encountered than the one in the Almeida-Sanchez case presently before the Court, and hence, reveals a more pervesive pattern of conduct. The Oceanside division of the Celifor

The Oceanside division of the Celling of Highway Patrol indicated that upwards of 25,000 automobiles per day travel north wild through the United States Border Patrol checkpoint in question in Berron. Over one month's time, approximately over one month's time, approximately 100,000 persons find themselves in the station presented in Barron, i.e., subject to exploratory searches totally

without Fourth Amendment protections. The vast number of persons directly affected here reveals that the situation in <u>Barron</u> more squarely presents the basic proposition and full implications of the challenged statute and regulation.

We are further presenting novel arguments not included in Petitioner's Opening Brief, which could prove helpful in arriving at a final determination of the important issues involved. The Solicitor General has a copy of our brief and has until August 18, 1972, within which to reply to Petitioner's Opening Brief which has not yet been printed.

Indeed, the most reasoned and expedient determination of all questions in Almeida and Barron demands consideration of the arguments in the following Brief Amicus Curiae.

CARPA

Respectfully sobmitted,

vithout Fourth Amendment proteoticys. The vast number of persons directly affected ere reveals that the situation in Berron more squarely presents the basic proposit and full implications of the challenged retute and regulation.

We are further presenting novel arguments not included in Petitioner's Opening Stief, which could prove helpful in arrivate a final determination of the important saues involved. The Solicitor Ceneral

has a copy of our brief and has until August 18, 1972, within which to reply to Patitioner's Opening Brief which has not yet been printed.

indeed, the most resconed and expedie determination of all questions in Almeids and Earren demands consideration of the arguments in the following Brief Amicus Curlae.

Respectfully submitted Tak 7/1://SSAN LURE MCKISSACK

THE EXCEPTION ALLOWING WARRANTLESS SEARCHES WITHOUT PROBABLE CAUSE UNDER 8 UNITED STATES CODE \$ 1357(a) AND DEFINED BY REGULATION 8 C.F.R. § 287.1(a) (2) CONTRAVENES PROTEC-TIONS AFFORDED BY THE FOURTH AMENDMENT. We are faced with a rule in the United States 9th Circuit Court of Appeals, which stands in conspicuous opposition to the constitutional protections generally provided by the Fourth Amendment. Those protections threatened by this rule are based on probable cause, are "...per se unreasonable under the Fourth Amendment, subject only to a few specifically established and well delineated exceptions" (Katz v. United States, 389 U.S. 347, 357 88 S. Ct. 507, 514, [1967]). The exception challenged here is not well delineated, nor have the cases demonstrated any rational grounds behind its establishment.

tobable cause for so doing.

WIE EXCEPTION ALLOWING WARRANTIESS SEARCHE WITHOUT PROBABLE CAUSE UNDER & UNITED STATE COT & 1357(a) AND DEFINED BY RECOVERTION \$ C.F.R. § 287.1(a) (2) CONTRAVENCE PROTEC-PIONS APPORDED BY THE FOURTE ANDNEWT. We are faced with a rule to the United States 9th Circuit Court of Appeals, which stands in conspicuous opposition to the constitutional protections generally pro-Wigod by the Fourth Amendment, Those or cactions threatehed by this rule are besed on probable cause, are "... per se an escheble under the Pourth Amendment, sai ject only to a few specifically estab-"anningence betsentieb liew bas beneal (Kets v. United States, 389 U.S. 347, 357 se s, ct. 807, 514, (1967)). The exception eallenged nexe is not well delineated, were have the cases demonstrated any retional

mounds behind its establishment.

A. NO APPARENT REASON EXISTS

WHY FOURTH AMENDMENT PRIN
CIPLES DO NOT APPLY WITH THE

SAME FORCE TO SEARCHES OF

AUTOMOBILES FOR SMUGGLED ALIENS

AS THEY DO TO SIMILAR SEARCHES

FOR SMUGGLED MERCHANDISE, THE

LOWER COURT ERRED IN BASING

ITS RULING UPON THIS DISTINCTION.

Petitioner contends that absent any showing that 1. an international boundary was crossed, and 2. that he fled the border inspection or was under surveillance, the search without probable cause was not, and cannot be legitimized as a border search.

Under the authority of 18 U.S.C. 1357,

Immigration and Naturalization Service officers have the right to search automobiles for illegal aliens within a reasonable distance of an international border to prevent the illegal entry of aliens provided there is probable cause for so doing.

NO APPARENT REASON EXISTS WHY FOURTH AMENDMENT PRIM-CIPLES DO NOT APPLY WITH THM SAME FORCE TO SEARCHES OF AUTOMOBILES FOR SMUGGLED ALLEN AS THEY DO TO SIMILAR SEARCHES FOR SMUGGLED MERCHANDISE. THE LOWER COURT ERRED IN BASING ITS RULING UPON THIS DISTINCTED Potitioner contends that absent any showing that I. an international boundary was crossed, and 2. that he fled the border inspection or was under surveillance, the carch without probable cause was not, and cannot be legitimized as a border search. Under the authority of 18 U. J.C. 1352. Tumigration and Wateralization Service officers have the right to search automobiles for illegal aliens within a reason live distance of an international border t prevent the illegal entry of aliens provid there is probable cause for so doing.

Cervantes v. United States, 263 F.2 800 (9th Cir. 1959). However, once it has been established that an individual has previously crossed an international border and is not presently under surveillance or pursuit, a search conducted seventy miles from the Mexican border, as in the case at bar, does not constitute a border search and is not justified absent probable cause. Thus, the Ninth Circuit Court of Appeals has held that the search of an automobile seventy miles from the nearest port of entry cannot be justified as a border search, but must be supported by probable cause. Cervantes v. United States, supra. In the Cervantes case, a Federal customs investigator for the United States Customs Service had received information on two occasions from an informant describing the defendant and his several entries into Mexico for purchases of narcotics. Moreover,

contes v. United States, 263 F. 2 800 No LCLY, 1989). However, once it hes tend length that an individual has es clously expeed as international border at is not presently under surveillance or estate, a search conducted seventy miles the Merican border, as in the case at our, done not constitute a border search and is not justified absent probable cause: The s, the Winth Circuit Court of Appeals was held that the search of an automobile seventy miles from the nearest port of entry cannot be justifled as a border de ch, but must be supported by probable inse. Cervantes v. United States, supra. the Carvantes case, a Federal customs in astigator, for the United States Customs sorvice had received information on two so galons from an informant describing the de codent and his several antries into Moxico for purchases of narcotics. Moreove

the investigator observed the defendant and his vehicle in Tijuana, Mexico, and, after checking defendant's license number, determined that the defendant had previous narcotics convictions, including one for unlawful transportation of narcotics into the United States. This information was given to border inspectors and the investimorized federal border official gator requested that the automobile and its occupants be thoroughly searched. On that same date, defendant crossed the international border at Tijuana without being searched by the border inspectors and proceeded north on U.S. 101 toward Los Angeles. Federal Immigration agents at San Clemente, being in possession of the aforedescribed information, stopped the defendant and, after searching the defendant and the vehicle, arrested him for importing, transporting and concealing narcotics. The Ninth Circuit, in reversing defendant's between Ourvantos' rementry into the

ter investigator observed the defendant the bis vehicle in Tituana, Mexico, and, at ar checking defendant's license number. becaused that the defendant had previous agreeticg convictions, including one for L otal solution to mottatrocament Lutur an to united States. This information was all to border inspectors and the investidefor requested that the automobile and ice occupants be thoroughly searched. On that same date, defendant crossed the or erestional border at Tijuana without Seing searched by the border inspectors and proceeded north on U.S. 101 toward Los Anceles, Vederal Immigration agents at San Clemente, being in possession of the and beggets, noisengoing beginnesses in de andant and, after searching the defendant and the vehicle, arrested him for importing, tice porting and concealing nercotics. The Minch Circuit, in reversing defendant's

conviction for lack of probable cause to stop and search defendant's vehicle at San Clemente, included the following remarks in a footnote regarding the Government's contention that the court could sustain the search as a border search:

rvantes had "An authorized federal border official stopped at Sen Clemente in connection may, upon unsupported suspicion, stop with a guestit. Insofar as the record and search persons and their vehicles neveals, therefore, his entry had entering this country. 19 U.S.C.A. Sec. 482. Carroll v. United States, supra, 267 U.S. at pages 153-154, 45 ment does not contend otherwise. S. Ct. at page 285. But after entry has been completed, a search and seizure can be made only on a showing of probable cause. Landau v. United States, 2 Cr., 82 F.2d 285, 286; searching defendant's vehicle; United States v. Lee Ngee How, D. C. 105 F. Supp. 517, 523. The record poressed as not inclient to a valid does not reveal the elapsed time aternational border sparche See, also, between Cervantes' re-entry into the

Sociation for lack of probable dause to son and search defendant's vehicle at ban Il conte, included the following remarks in a footnote required the Covernment's en tention that the court could sustain the search as a border searcht "An authorized federal border official may, upon unsupported suspiction, stop and search persons and their vehicles entering this country. 19 U.S.C.A. Soc. 482. Carroll v. United States, supra, 267 U.S. at pages 153-154, 45 5. Ct. at page 285. But after entry has been completed, a search and private a no vino ebam ed nao erusies of probable cause. Landau v. United States, 2 Cr., 82 F.2d 185, 286; United States v. Lee Mque Now, D. C. 105 F. Step. 517, 523. The record does not reveal the clapsed time between Cervantes' ro-entry tobo the

United States on December 8, 1955, and his arrest at San Clemente. However, we take judicial notice of the fact that San Clemente is more than seventy miles from the nearest port of entry from Mexico. There is no indication in the record that Cervantes had stopped at San Clemente in connection with a pursuit. Insofar as the record reveals, therefore, his entry had been completed prior to the time he reached San Clemente, and the government does not contend otherwise." Cervantes v. United States, 263 F.2d 800, 803, n.5. [Emphasis added.]

It is submitted that in the case at bar, absent independent probable cause for detaining and searching defendant's vehicle, any evidence sought to be introduced be suppressed as not incident to a valid international border search. See, also,

United States on December 8, 1955, and his arrest at San Clemente, However, we take judicial notice of the fact that San Clemente is more than seventy piles from the nearest port of entry from Mexico. There is no indication in the record that Cervantes had stopped at San Clamenta in compaction with a pursuit. Insolat as the record reveals, therefore, his entry had seen consleted prior to the time he reached San Claments, and the covernment does not contend otherwise." Cervantes v. United States, 263 F. 28 800, 803, n.5. (Emphasis added.) it is summitted that in the case at bar, ses ent independent probable cause for detaining and searching defendant's vehicle; are evidence sought to be introduced be blisv a of theblock for as besset to

international border search. See, also,

United States v. Hortze, 179 F. Supp. 913, 918 (D.C. Calif. 1959). To conclude otherwise, not only the Petitioner, but all persons who travel northwest to other parts of California would by virtue of travelling on Highway 78 or all major highways, surrender their Constitutional protection against unreasonable searches and seizures; and this is true whether or not the persons involved ever crossed the border. Such an argument is certainly fatuous and invalid. Justice Browning, in his dissenting opinion in the case at bar, vehemently shares our continuing confusion over the attempt to distinguish between searches for contraband and searches for aliens.

"If a reason exists for distinguishing searches for aliens from searches for merchandise, no one - including this court-has yet suggested what it might be. Nothing in the words of the

nited States V. Hortze, 179 F. Supp. 913, 1 (D.C. Cailf, 1959). To conclude of stwise, not only the Petitioner, but all persons who travel northwest to other io entries would be wirtue of the state on Highway 78 or all major bighsurrender their Constitutional protect tion against unresponable searches and as success and this is true whether or not the persons involved ever crossed the border Such an arquinent is certainly fatuous and in tild. Justice Browning, in his dissentin or nion in the dase at bar, vehemently sistes our continuing confusion over the assumpt to distinguish between searches Is contrabend and mearches for aliens. "If a reason exists for distinguishing searches for aliens from searches for merchandise, no one - including this court-has yet studested what it might be. Nothing in the words of the

Constitution supports the distinction, and no one suggests that the public interest in excluding inadmissible aliens is greater than that in excluding narcotics and other contraband" <u>United</u>

States v. <u>Almeida-Sanchez</u>, 452 F.2d 459 (1971)

We, therefore, continue to assert the applicability of Fourth Amendment protections to the present case, despite the absurd application of 8 U.S.C. \$1357(a) which threatens to deny those protections. If the rational distinction which Judge Browning as well as Petitioner fail to find, exists, we demand to know what it is before abandoning the assertion of rights Constitutionally protected by the Fourth Amendment.

inbers rule which allowed warrantless

es of vehicles (with probable cause)

won when seized. This underiably

makenestash will assemble mossentiasmus
claim wit said adecepte and on his
claim out said adecepte at decepts

below at their and teaming at weetle
asing Banderstone continues actions

bec. 2 ath , adeces weetlemin at metals

on the very continue to annot the anticessality of Fourth Amendment protection of a protection of a protection of a protection of a U.S.C. \$1357(a) which is attack to dury those protections. If the tailoral distinction which Sudue a coming as well as for those thing for the tail to find for the above the above the find for the antice of the find the common of the antice of the court of the fourth of the f

THERE IS NO RATIONAL JUSTIFICATION FOR ALLOWING S U.S.C. 9 1357(a) TO SERVE AS A BLANKET EXCEPTION TO THE FOURTH AMEND-MENT REQUIREMENT OF PROBABLE CAUSE.

In further stressing the absurdity
of 8 U.S.C. § 1357(a) which allows
warrantless searches without probable cause,
appellant urges the court to note that the
judicial trend is in the opposite direction,
is., toward a narrowing of exceptions which
allow warrantless searches toward strict
enforcement of the probable cause requirement; and to a narrowing of the scope of
searches to eliminate the obtrusive
"exploratory" search.

For example, Coolidge v. Hew Hempshire, (1971) 403 U.S. 443, 91 S. Ct. 2022, limited the Chambers rule which allowed warrantless searches of vehicles (with probable cause) in motion when seized. This undeniably

THE IS NO PATIONAL JUSTIFICATION FOR ALLOWING 8 U.S.C. 5 1387(3) TO SERVE AS A SLAWKET EXCEPTION TO THE FOURTH AMEND-WITT REQUIREMENT OF PROSESSED CAUSE.

In further stressing the absurdity

or sold. Sold which allows warrantleds searches without probable cays. Surphilant drops the court to note that the specifical trend is in the opposite direction in the opposite direction which is, toward a parrowing of exceptions which a low warrantless searches toward strict and orderent of the probable dames required and to a parrowing of the stope of

Por example, Coolidge v. New Hampshire
(1971) 403 U.S. 443, 91 S. Ct. 2022, Minite
(Chambors rule which allowed warrantless
schools of vehicles (with probable cause)
in motion when seized. This undeniably

represents the court's wish to limit the exception of the "movable auto" exigency. Yet, under 8 U.S.C. § 1357, and under the guise of a search for "aliens", any auto within 100 miles of an external boundary could be searched without a warrant in possible violation of Coolidge, and without probable cause in violation of the Supreme Court mandate in both Coolidge and Chambers. Section 1357 potentially renders such cases meaningless.

Further, the probable cause requirement has been held subject to limitations dictated by alleged criminal activity, and by the "reasonable" expectations of the officers under the circumstances. In <a href="People">People</a> v.

Superior Court (Kiefer), 3 Cal. 3d 807, 91

Cal. Rptr. 729 (1970), the Court stated that even when there is probable cause to arrest, a search for weapons must remain "reasonable in scope".

represents the court's wish to limit the solution of the "movable futo" exigency.

Yet, under 8 U.S.C. & 1357, and under the gales of a search for "allene", any auto within 100 miles of an external boundary could be searched without a warrant in presible violation of Coolings, and without probable cause in violation of the Supreme Court mandage in both Coolings and Chambar Section 1357 potentially renders such cases a samingless.

Forther, the probable dause requirement has been held subject to limitations dictar by alloyed criminal activity, and by the "reasonable" expectations of the office/s ", where the discussioness. In People v. "Station Court (Mieter), 3 Call 3d 807, 91 of a appearance of the Court stated of the their is probable cause to sarest, a search for weapons must remain

. "encos ni sidanosés:

"Just as the arresting officer in an ordinary traffic violation case cannot reasonably expect to find contraband in the offender's vehicle, so also he cannot expect to find weapons. To allow the police to routinely search for weapons ... would likewise constitute an 'intolerable and unreasonable' intrusion into the privacy of the vast majority of peaceable citizens who travel by automobile. It follows that a warrantless search for contraband must be predicated ... on specific facts or circumstances giving the officer reasonable grounds to believe the that such weapons are present in the vehicle he has stopped." [3 Cal. 3rd at 829, 91 Cal. Rptr. at 744]. Indeed, very recently in California, the limitation of scope of search incidental to arrest articulated in Chimel v. Cassal,

ordinary traffic violation case came reasonably expect to find contraband in the offender's vehicle, so also he cannot exact to find weadons. To allow the police to routinely search for weapons ... would likewise constitute an 'intolerable and unreasonable intrusion into the privacy of the vast majority of peaceable citizens who trayel by automobile. It follows that a warrantless search for contraband must be predicated ... on specific facts or circumstances giving the officer reasonable grounds to believe that such weapons are present in the vehicle he has stopped," [] Cal. 3rd at 829, 91 Cal. Rptr. at 744]. Indeed, very recently in California, the limitation of scope of search incidenta to arrest articulated in Chimel v.

Just as the arresting officer in An

California (1969) 395 U.S. 752, 89 S. Ct. 2034 has been applied to searches of automobiles. (People v. Koehn, 102 Cal Rptr. 102, May 1972). These decisions dictate that a search without a warrant can be conducted in a non-emergency situation, only if the search coincides with a lawful arrest or detention and is restricted to the arrestee's person or area "within his immediate control (395 U.S. at 762-3). Yet, under § 1357, no warrant is required, no probable cause, no lawful arrest and no restriction of scope of search. One has only to "look for" aliens, and the Fourth Amendment protections supported by the above decisional law, vanish.

Other cases have limited the use of "furtive gestures" as a basis for probable cause to search. (Gallik v. Superior Court of Santa Clara County, 5 Cal. App. 3d 862, 97 Cal Rptr. 693 (1971); People v. Cassel,

California (1969) 395 U.S. 752, 89 S., Ch. 2014 has been applied to searches of aut windles. (People v. Mochin, 181 dal Ross. 102, May 19721. These decisions diorate that a search without a warrant can be .. conducted in a non-emergency situation, only if the search doingides with a lawful aviset or decention and is restricted to the arrestee's person or area "within his inmediate control (395 U.S. at 762-3). Vil under 2 1357, no wastant is required; a probable cause, no lewful arrest and m restriction of score of search. One has only to "look for" aliens, and the fourth Amendment protections supported by is above decisional law, wanish: Other cases have limited the Use of "turtive quetories" se a basis for probable Calle to search. (Galith v. Superior Court ones Clara County, 5 Cal. App. 38 862,

St Cal Eptz. 693 (1971); People v. Cassel,

People v. Williams, 20 Cal App. 3d 590, 97 Cal. Rptr. 815 (1971). That limitation is meaningless if the probable cause requirement is abandoned.

Finally, the courts in California for example, have tried to put a halt to the more obvious abuses of the authority of the police to "inventory" the contents of automobiles lawfully in their custody pursuant to the removal and storage provisions of the vehicle code. [Mozzetti V. Superior Court, 4 Cal App. 3d 699, 94 Cal. Rptr. 412 (1971); see also, People v. Heredia, 20 Cal. App. 3d 194, 97 Cal. Rptr. 488 (1971) [Mozzetti rule not merely prospective in effectl; Virgil v. Superior Court, 268 Cal. App. 2d 127, 73 Cal. Rptr. 793 (1968) I. His Pourth Amendment rights

In Mozzetti, there was no arrest, nor probable cause. The court saw no rational

a cat App 3d 715, 108 Cal Rptr. 520 (197 ople v. Williams, 20 cat App. 3d 500, co. Rptr. 815 (1971). That limitation to controllers if the probable cause require avendoned,

Finally, the courts in California for example, have tried to put a halt to the more obvious abuses of the authority of the police to "inventory" the contents of automobiles lawfully in their custody Dursuant to the removal and storage provide ground of the vehicle code. [Mossettl V. marior Court, 4 Cal App. 36 699, 94 Cal orr. 412 (1971); see also, People V. toredon, 20 Cal. App. 36 194, 97 Cal. Pp. use (1971) [Mozzetti rule not marely prospective in effectly Virgil v. Superio Court, 268 Cal. App. 2d 127, 73 Cal. Apt 193 (1968) Let

. In Mozzatti, there was no arrest, no propable cause. The court saw no ration

grounds for diluting Fourth Amendment protection merely for "inventory" purposes.

The court in <u>Koehn</u>, quoted the following from Mr. Justice Stewart's opinion in <u>Coolidge</u>:

"...the word 'automobile' is not a talisman in whose presence the Fourth Amendment fades away and disappears."

(Coolidge v. New Hampshire, supra, 91 S. Ct. 2022, 2035).

Following Mozzetti, the "inventory" may no longer serve as the catalyst disintegrating the Fourth Amendment protections. Unfortunately one such "talisman" remains: the word "alien". Petitioner strongly denies existence of any rationale for this exception. He rightfully demands an explanation before he submits to what can now only be termed a blatant disregard of his Fourth Amendment rights under the constitutionally invalid mandate

4154

provinds for diluting Fourth Amendment, protection merely for "inventory" purposes the court in <u>Koehn</u>, quoted the following from Mr. Justice Stewart's opinion in realigners

"...the word 'automobile' is not a . talisman in whose presence the Fourth amaginent fades away and disappears." (Coolidge y. New Hampshire, supra, sp. S. Ct. 2022, 2035).

Following Morretti, the "inventory" may no longer serve as the catalyst disintegrating the Pourth Amendment protections. Unfortune one such "talisman" remains: the word "alietisman" strongly denies existence of any rationale for this exception. Be rightful demands an explanation before he submits to

what can now only be termed a platant disreverd of his Pourth Amendment rights wher the constitutionally invalid mandate

of 8 U.S.C. \$1357.\*

2018 COURT MUST IN ACCORD WITH ITS CONSTITU-

TIGHT DOTY TO ADNUL STATUTES AND RECULATION

TO DATE OF THE CONSTITUTION; STRIKE DOWN

THIS CHUARDANTED GOVERNMENTAL PID FOR LEBEN-

FIRST AS INDIFFERENCED BY GOVE ANTENIAL REGULA-

LIONS MESCINDING THE STATE AND SEIZURE RIGHT

OF OUR CITIZENS, DENYING THEM EQUAL PROPEC-

TOW OF THE LAWS, ABRIDGING THEIR RIGHT TO

GP RIDUEL AMERICA, DETERRING DAW ABIDING

SEDUCE AMERICANS FROM SERVING EMPLOYMENT OR

ENJOYING VACATIONS NEAR OUR NATION'S BOUND-

URIES, AND OBSTRUCTING FREEDOM OF INTERSTATE

MAYER, COMPRESSING THEM INTO THE

<sup>\*</sup> The 9th Circuit Court of Appeals has itself, made inroads on the carte blanche justification for even border searches. See Henderson v. United States (9th Cir. 1967) 390

F.2d. 805 (probable cause essential to support search of body cavities).

9/ 8 U.S.C. \$1357.\*

The 9th Circuit Court of Appeals has itsoil, made inroads on the carte blanche jusillication for even border searches. See Henserson v. United States (9th Cir. 1967) 190
f. 2d. 805 (probable cause essential to supevil. earth of body davities).

Maria Ma

THIS COURT MUST IN ACCORD WITH ITS CONSTITUTIONAL DUTY TO ANNUL STATUTES AND REGULATIONS
VIOLATIVE OF THE CONSTITUTION, STRIKE DOWN
THIS UNWARRANTED GOVERNMENTAL BID FOR LEBENSRAUM AS IMPLEMENTED BY GOVERNMENTAL REGULATIONS RESCINDING THE SEARCH AND SEIZURE RIGHT
OF OUR CITIZENS, DENYING THEM EQUAL PROTECTION OF THE LAWS, ABRIDGING THEIR RIGHT TO
TRAVEL, COMPRESSING THEM INTO THE REFUGE
OF MIDDLE AMERICA, DETERRING LAW ABIDING
MIDDLE AMERICANS FROM SEEKING EMPLOYMENT OR
ENJOYING VACATIONS NEAR OUR NATION'S BOUNDARIES, AND OBSTRUCTING FREEDOM OF INTERSTATE
COMMERCE.

It has been clear since Marbury v.

Madison, 1 CRANCH 137 (1804) that Congress
can neither make nor enforce a law, rule, or
regulation which is counter to the United
States Constitution. This principle is the
bedrock of our form of Government, yet Congress and State legislatures and administra-

THE COURT MUST IN ACCORD. WITH ITS CONSTITONAL DUTY TO ANNUL STAYUTES AND REQULAT
VIOLATIVE OF THE CONSTITUTION, STRIKE DOWN
THIS UNWARRANTED GOVERNMENTAL BID FOR YERS
STAUM AS IMPLEMENTED BY GOVERNMENTAL RUDGE
TIONS RESCINDING THE SEARCH AND SHIRURE RI
OF GOR CITIZENS, DENYING THEM YOUAL PROTECTION OF THE LAWS, ABRIDGING THEM YOUAL REPUGE
TION OF THE LAWS, ABRIDGING THEM REPUGE
OF MIDDLE AMERICA, DETERRING HAR ABIDING
ALDRE AMERICA, DETERRING HAR ABIDING
ALDRE AMERICA, DETERRING HAR ABIDING
ALDRE AMERICAN FROM SEEMING SMELOYMENT OR
ALDRE AMERICAN HAR OUR NATION'S BOUNDARIES, AND OBSTRUCTING FREEDOM OF INTERSTATE

It has been clear since Marbury W.

Misison, 1 CRANCH 137 (1804) that Convess

Con neither make nor enforce a law Inde, or

regulation which is counter to the United

Store Constitution, This principle is the

belook of our form of Government, yet Con
thuse and State legislatures and administra-

the bounds of our Constitution. It is the Judiciary's duty to be watchful for citizen's constitutional rights. Boyd v. United States 116 U.S. 616, 6 S. Ct. 524 (1886). When a person brings a proper case complaining of infringements of constitutional rights, the judicial branch of our Government must ascertain the validity of suspect laws passed by our legislative bodies, and at least as great a duty exists when administratively passed regulations are challenged. Individuals must be protected from both willful and unwitting encroachment upon their constitutional rights. "This duty cannot be discharged as though it were a mere procedural formality." Von Moltke v. Gillies, 332 U.S. 78, 68 S. Ct. 316 (1948). It must be thoroughly and thoughtfully considered. Here, by the stroke of a pen, the Government has eliminated Fourth Amendment protections for a majority of our 200

the bounds of our Constitution. It is the Sudjoiery's duty to be watchful for cities constitutional rights. Boyd v. United Sta 116 U.S. 616, 6 S. Ct. 524 (1886). When A extrem brings a proper case complaining of stringements of denstitutional rights, th taum insmnievod aug fo donaid laislos accetain the valuatity of suspect laws as bos veetbod evidatabel zuo vd beseen least as great a days exists when adminissussively passed regulations are challenge mostiduals must be protected from both willing and unwitting encroachment upon cheir constitutional rights, "This duty connect be discharged as though it were a sere procedural formality. Ton Noltke To cillica, 332 U.S. 78/ 68 S. Ct. 316 (1948) it must be thoroughly and thoughtfully considered. Here, by the stroke of a pen he Government has bliminated Pourth Amen. sent protections for a majority of our 200

million citizens. (See Appendix A). One
of the laws here in question, 8 U.S.C. 1357
(a), allows searches of vessels and vehicles
for aliens with no need of obtaining a search
warrant and without even probable cause,
as long as within a "reasonable distance"
of an external boundary. Implementing this
law is 8 C. F. R. 287.1(a) (2), which defines
"reasonable distance" as 100 air miles from
any external boundary. Recent cases have
accepted these laws more by rote than by
reason. An example is the pending case.

Here, the court must not only analyze the ends of the 8 U.S.C. 1357(a) and 8 C.F. R. 287.1(a)(2) but must also examine their means to determine if they comport with constitutional standards.

In similar legislation, 19 U.S.C. 482, Congress literally authorized searches for foreign contraband anywhere in the United States without either a search

colde cities of less than one-half

million ditizens. (See Appendix A). Copthe law here in question, 8 U.S.C. 1987 or, allows searches of vessels and vehicle streng with no need of objecting a seat without even probable cause, .. as long as within a "reasonable distance" of an external boundary. Implementany this 164 18 C. F. B. 287.1(a) (2), which defin reggonable distance" as 100 mir miles from y external boundary. Recent cases have compted these laws more by rote than by rasso. An example is the pending care. Here, the court must not only analyze the ends of the 8 U.S.C. 1357(s) and 8 C.F 1. 287.1(a)(2) but wost also examine their means to determine if they compact - to constitutional standards. In sighter legislation, 19 U.S.C. 492 congress literally authorized searches for

end ni erentwore basedarinco more;

nited States without either a search

1

warrant or probable cause. The courts, doing their duty, have understandably balked at such broad authorization and have required probable cause to search unless it is a border search. Cervantes v. United States (9th Cir. 1959) 263 F.2d. 800.

If these rules are upheld, the people of the following cities, Seattle, San Francisco, Los Angeles, San Diego, Phoenix, San Antonio, Houston, New Orleans, Miami, Baltimore, Philadelphia, Pittsburg, New York, Buffalo, Cleveland, Columbus, Detroit and Washington, D. C.; (cities in excess of 500,000 people) plus the entire population of the states of Florida, Delaware, New Jersey, Connecticut, Rhode Island, Maine, New Hampshire, Vermont and Hawaii, 59 million people, can be stopped and their vehicles searched without probable cause, and as the law is stated, without any justification. If we were to further include cities of less than one-half

we sat or probable cause, The courts. doing their duty, have understandably balked as such broad authorization and have weathed probable cause to search whiese it is a border search. Corventer v. United Sector (9th Cir. 1959) 263 F. 2d. 800. If these rules are upheld, the people of the following cities, Seattle, San Franelsoo, Los Angeles, San Diego, - hoenix. Ean Antonio, Houston, New Orleans, Miami, Maltimore, Fhiladelphia, Pittsburg, New York, Buffalo, Claveland, Celumbus, Detroit and Washington, D. C.; (cities in excuss of 500,000 people) plus the entire population of the states of Florida, belaware, New Jersey, Connecticut, Rhode

Island, Maine, New Hampshire, Vermont and Nawnii, 59 million people, can be stopped and their vehicles searched without probably cast, and as the law is stated, without any justification. If we were to further

limitude cities of less than one-half.

million people, we would learn that the preponderant majority of Americans are subject to the loss of their search and seizure rights under existing legislation.

(See Appendix A).

The right to be free from unreasonable searches and seizures, is inextricably interwoven into the fabric of our society. Yet, the Government has arbitrarily chosen, 100 miles from an external boundary as a "no Fourth Amendment Rights" zone. In this zone, Government agents can take away Fourth Amendment protections when riding in vehicles.

United States, 267 U.S. 132, 153-154, 45 S. Ct. 280, 285 (1925) said:

"It would be intolerable and unreasonable if a prohibition agent were authorized to stop every automobile on the chance of finding

stillion people, we would learn that the preponderant majority of Americans are anject to the loss of their search and searure rights under existing legislation.

The right to be free from unreasonable searches and selectes, is inextricably interwoven into the fabric of our society.

The covernment has arbitrarily obcaen, is, the Government has arbitrarily obcaen, is the from an external boundary as a light from an external boundary as a property has named and rights acre. In this some, Government agents due take away fourth Amendment protections when riding in vehicles.

Chief Justice Taft in Carroll V. Suited States, 267 U.S. 132, 153-156, 45 P. Ct. 280, 285 (1925) said:

"It would be intolerable and
unreasonable if a prohibition agent
""
"ere authorized to stop every automobile on the chance of finding

liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. But those lawfully within the country, entitled to use the public highways, have a right to free passage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or illegal merchandise.." [Emphasis added] Furthermore, 8 U.S.C. 1357(a) and 8 C.F.R. 287.1(a)(2) read together, run afoul of the Equal Protection provisions of the Fifth Amendment. Distance from the beach or any other external boundary should not be a criterion for determining the extent of one's constitutional rights. The residents of Miami cannot be afforded lesser constitutional rights than the

liquor, and thus subject all persons lawfully using the highways to the inconvenience and indignity of such a search. But those lawfully within the country, entitled to use the public highways, have a right to free pasuage without interruption or search unless there is known to a competent official authorized to search, probable cause for believing that their vehicles are carrying contraband or dilegal merchanding. " [Emphasis, added] Furthermore, 8 U.S.C. 1357(#) and 1 . V.R. 287.1(a) (2) tead together, run about of the Equal Protection provisions or the Fifth Amendment, Distance from the cosch or any other external boundary a oild not be a criterion for determining the extent of one's constitutional rights. The residents of Mismi cannot be afforded deser constitutional rights than the

"invidious discrimination" of the most rank sort. See e.g. McLaughlin v. Florida, 379 U.S. 184, 190, 194, 85 S. Ct. 283 (1964); Douglas v. California, 372 U.S. 353, 356, 83 S. Ct. 814 (1963); Skinner v. Oklahoma, 316 U.S. 535, 541, 62 S. Ct. 110 (1942). These laws also inhibit the right to travel. Travel restrictions within the United States were struck down long ago. In Kent v. Dulles, 357 U.S. 116, 125-126, 78 S. Ct. 1113, 1118, (1958). Mr. Justice Douglas stated for this court:

"The right to travel is a part of
the 'liberty' of which citizens
camnot be deprived without the due
process of law under the Fifth
Amendment...In Anglo-Saxon Law,
that right was emerging at least as
early as the Magna Carta..Freedom of
Movement across frontiers in either

\*\* 'Sants of Kansas City, It amounts to an invident discrimination' of the most rank at i. See e.g. McGanghlin, v. Florida, 379 at i. See e.g. McGanghlin, v. Florida, 379 at i. See, 130, 134, 25 S. Ct. 283 (1964); C. 184, 130, 134, 25 S. Ct. 283 (1964); C. 184, 130, 144, 272 U.S. 353, 356, 25 S. Ct. 814 (1963); Skinner v. Oklahoma, 25 S. Ct. 814 (1963); Skinner v. Oklahoma, 25 S. Ct. 110 (1942).

\*\* Ct. 814 (1963); Skinner v. Oklahoma, 25 S. Ct. 110 (1942).

\*\* Ct. 814 (1963); Skinner v. Oklahoma, 25 S. Ct. 110 (1942).

\*\* Ct. 814 (1963); Skinhin the United States at us at restrictions within the United States willes, 157 U.S. 116, 125-126, 78 S. Ct.

\*\* List, 1118, (1958); Mr. Justice Douglas at cat for this court.

"The right to travel is a part of the 'liberty' of which craises cannot be deprived without the dus process of law under the rifth Amendment... In Abglo-Stron baw, that right was emerging at least as that right was emerging at least as movement across frontlers in either movement across frontlers in either

direction, and inside frontiers as

well, was a part of our heritage.

...travel within the country, may

be necessary for a livelihood. It

may be as close to the heart of the

individual as the choice of what he

eats, or wears, or reads. Freedom of

movement is basic in our scheme of

values."

<u>Aptheker v. Secretary of State</u>, 378 U.S. 500, 84 S. Ct. 1659 (1964), <u>Zemel v. Rusk</u>, 381 U.S. 1, 85 S. Ct. 1271 (1965).

Mr. Justice Stewart reiterated the fundamental nature of the right in <u>United</u>

<u>States v. Guest</u>, 383, U.S. 745, 757-758, 86 S. Ct. 1175, 1778 (1966):

"The constitutional right to travel...
occupies a position fundamental to
the concept of our Federal Union.

It is a right that has been firmly
established and repeatedly recognized.

direction, and inside frontiers as, well, was a part of our heritage. ... travel within the country, may be necessary for a livelihood. It may be as close to the heart of the individual as the choice of what he eats, or wears, or reads. Freedom of savement is basic in our scheme of values.\*

Josepher V. Secretary of State, 378 U.S. 500, 84 S. Ct. 1659 (1964), Remel V. Rusk, 321 U.S. 1, 85 S. Ct. 1271 (1965).
Mr. Justice Stewart reiterated the

Ar. Justice Stewart referated the fundamental nature of the right in <u>United</u> states v. Guest, 383, U.S. 765, 757-758, 365 J. Ct. 1175, 1778 (1966):

"The constitutional right to travel..

occupies a position fundamental to

the concept of our Federal Union.

It is a right, that has been firmly
established and repeatedly recognized.

In any event, freedom to travel throughout the United States has long been recognized as a basic right under the Constitution."

In the landmark decision of Shapiro y.

Thompson, 394 U.S. 618, 629-630, 89 S. Ct.

1322, 1329 (1969), Mr. Justice Brennan

declared for the majority:

"This court long ago recognized that
the nature of our Federal Union and
our constitutional concepts of personal liberty unite to require that
all citizens be free to travel
throughout the length and breadth
of our land uninhibited by statutes,
rules, or regulations which unreasonably burden or restrict this movement.
That proposition was early stated by
Chief Justice Taney in the Passenger
Cases, 7 How. 283, 492, 12 L. Ed. 702

In any event, freedom to travel throught the united States has long been recognized as a besic right under the Censtitution.

In the landwark decision of Shapirg y Company, 394 U.S. 618, 629-630, 89 G. Ct. 1324, 1329 (1969), Mr. Justice Brannan decised for the majority:

"This court long ego recognized that the nature of our Federal Union and our constitutional concepts of personal Liberty unite to require that all citizens be free to travel throughout the length and breadth of our land uninhibited by statutes, rules, or regulations which unreasonably burden or restrict this movement and proposition was early stated by Chief Justice Tahey in the Passenger Chief Justice Tahey in the Passenger Cases, 7 Now., 283, 692, 13 L. Ed. 702

clearly in the present case, the government has unreasonably, and without justification, burdened the right to travel. See also Edwards v. California, 314 U.S. 160, 62 S. Ct 164 (1941), Aptheker v. Secretary of State, 378 U.S. 500, 84 S. Ct. 1659 (1964), Zemel v. Rusk, 381 U.S.1, 85 S. Ct. 1271 (1965). The regulations here in question will put a chill on the choice of where to travel. If every midwesterner feared the possibility of searches at any time without probable cause, he would certainly be deterred from traveling to or near any external boundary. "Wherever a man may be, he is entitled to know that he will remain free from unreasonable searches and seizures. Katz v. United States, 389 U.S. 347, 359, 88 S. Ct. 507, 515 (1967). It has therefore, been undeniably established that the right to travel is a "fundamental" constitutional right. We recognize that freedom of travel,

Where is the 'sudden dancer'

Charly in the present case, the governmen ase unreadonably, and school justification bardened the right to travel. See also the ards w. California, 114 U.S. 160, 62 S. tot (1941), Aprileker v. Secretary of State 975 U.S. 500, 84 S. Ct. 1659 (1964). 1751 . Pusk, 381 U.S. 1, 85 S. Ct. 1271 (1.45). The regulations here in question wil put a chill on the choice of where, to Caral. If every midwesterner fear of the granibility of searches at any time without county order, he would dertainly be stred from traveling to or near any external boundary. "Wherever a man may be to is entitled to know that he will remain tion unreasonable searches and deira . v. United States, 189 U.S. 247, 359, te s. cu. 507, 615 (1967). It has theref he m undeniably established that the righ of travel is a "fundamental" constitution right, We recognize that freedom of trav

5

which could justify the present restriction? like freedom of speech, may be subject to to taking cril Orete? The war in Vietnam? reasonable limitations as to time and place. The government, if not the Court, may take comfort in the fact that existence of a Sther, Mr. Justice Roberts dissented "compelling governmental interest" necessary extsu from what he considered too to justify infringement of a fundamental a restriction on the right constitutional right finds precedent in the march. At least a temporal limitation was notorious, if not celebrated case of Massacat in that situation. The right to Korematsu v. United States, 323, U.S. 214, a literal reading of \$ 1357 65 S. Ct. 193 (1944). Though the Court tel, on the other hand, is restrict has been understandably reluctant to refer desofinitely. The overbreadth of \$ 1357(a) to Korematsu, the case held that:

sk of a compelling governmental. "The liberty of every American citizen st to justify the blatant infrincement freely to come and go must frequently, undamental right to travel, demand in the face of sudden danger, be temporarily limited or suspended." are indititing of the right to travel (323 U.S. at 231), See also Hirabayashi dec has interstate connerce inclica v. United States, 320 U.S. 81, 63 S. Ct. 1375 (1943). Here was justification had tabveling from mid-America states to for the internment of thousands of horder states, thus decreasing the flow Japanese, 80% of whom were American citizens

by birth. Where is the 'sudden danger'

The freedom of speach, may be subject to rest unable timitations as to time and place The government, if not the Court, may take owlord in the fact that existence of a "o myelling governmental interest" negespa is recally infringement of a fundamental sometituitional right finds procedent in the nevertous, if not oslebrated case of Edwards V. United States, 323, U.S. 214, 45 S. Ct. 193 (1944) Though the Court has seen understandably reluctant to refer to Morematsu, the case held that; "The liberty of every American oitize liesly to come and do must frequently in the face of sydden danger, be temporarily limited or suspended. (323 U.S. at 231), See also Hirabayas v. United States, 320 U.S. 81, 63 S. 1375 (1943), Here was justification for the interment of thousands of ... Japanese, 80% of whom were American citize

to birth. Where is the 'sudden danger'

which could justify the present restriction?

A rising crime rate? The war in Vietnam?

Very obviously, no exigency exists as
justification.

Further, Mr. Justice Roberts dissented in Korematsu from what he considered too broad a restriction on the right to travel. At least a temporal limitation was inherent in that situation. The right to travel under a literal reading of \$ 1357 (a), on the other hand, is restricted indefinitely. The overbreadth of \$ 1357(a) and lack of a compelling governmental interest to justify the blatant infringement of the fundamental right to travel, demand that it be ruled unconstitutional.

This inhibiting of the right to travel also has interstate commerce implications.

The chilling effect will dissuade people from traveling from mid-America states to border states, thus decreasing the flow

which could justify the present restricts a chain or ine tate? The war in Tetnem? We've obviously, no exigency exists as justification.

Further, Mr. Justice Roberts dissended to a foremates from what he considered too brief a restriction on the right to

erreal. At least a temporal limitation we interest in that situation. The right'to travel under a literal reading of \$ 1357

is, on the other hand, is restricted in elimitely. The overbreadth of \$ 1357(a

and tack of a compelling governmental accordant to justify the platant infringement of the fundamental right to travel, demand that it be ruled unconstitutional.

This inhibiting of the right to trave size has interested commerce implications.

The chilling effect will disseade people from traveling from mid-America states to the states, thus decreasing the flow

of commerce and impairing the commercial viability of, for example, motels, restaurants, and gas stations along interstate routes. See <u>Heart of Atlanta Motel</u>, <u>Inc. v. United States</u>, 379 U.S. 241, 85 S. Ct. 348 (1964).

se for constitutional infringements.

If the Government's contention is
that the border is too difficult to police
and therefore the inland check points are
needed, then the regulation should surely
be struck down. Inefficiency can never
be traded off against constitutional
rights. Furthermore, there is no showing
that the checkpoint in question is
essential to patrolling the CaliforniaMexican border for aliens or contraband.

The potential for abuse is plain. By intoning the words, "I'm looking for aliens" immigration officials can vaporize Fourth Amendment rights. The court must thoroughly examine 8 U.S.C. 1357(a) and 8 C.F.R. 287.1

of commerce and impairing the commerce viability of, for example, motels, restants, and gas stations along interstationables. See Heart of Atlanta Motel. In Chaired States, 279 U.S. 241, 85 S. C. 48 (1964).

If the Government's contention is that the border is too diffiguit to polar and therefore the inland obeck points a cooked, then the requisition should sure to struck down. Instituteency can never

be traded off against constitutional

sat the checkpoint in question is constituted to patrolling the California-

The potential for abese is plain, intening the words, "I'm looking for all signation officials can vaporise Fourt sendment rights. The court must thorous waite 8 U.S.C. 1257(a) and 8 C.F.R. 28

(a) (2) for constitutional infringements.
If not, perhaps in a few years, 125 miles
will be "reasonable", then 150, 200,.....

The blatant displacement of Constitutional rights caused by 8 U.S.C. 1357(a) and 8 C.F.R. 287.1(a) (2), and the paucity of compelling Governmental interests require invalidation of these two regulations and the reversal of Appellant's conviction.

Lake Sckasses

To (2) for constitutional infringements.

11 ant, perhaps in a few years, 125 miles

21 in a "reasonable", then 150, 200,....

The blatant displacement of Constitutional rights caused by 8 U.S.C. 1357(a)

10 38.2.2.287.1(a) (2), and the panoity of

consilling Covernmental interests
require invalidation of these two regulat
the raversal of Appellant's conviction

## Conclusion

Petitioner's conviction should be reversed.

Respectfully submitted,

Luke McKissack